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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA  
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6 RICHARD LEE SATERSTAD )

7 Plaintiff, )

8 vs. )

9 STATE OF NEVADA, )

10 Defendant. )  
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Case No. 2:16-cv-01947-JAD-CWH

**AMMENDED ORDER &  
REPORT &  
RECOMMENDATION**

12 Presently before the court is pro se Plaintiff Richard Lee Saterstad's application to proceed  
13 *in forma pauperis* (ECF No. 9), filed on October 24, 2017. Also before the court is Plaintiff's  
14 motion for appointment of counsel (ECF No. 5), filed on May 1, 2017.

15 **I. IN FORMA PAUPERIS APPLICATION**

16 Plaintiff has submitted the declaration required by 28 U.S.C. § 1915(a) showing an inability  
17 to prepay fees and costs or give security for them. Accordingly, Plaintiff's request to proceed *in*  
18 *forma pauperis* will be granted.

19 **II. SCREENING COMPLAINT**

20 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint  
21 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims  
22 and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be  
23 granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
24 § 1915(e)(2)(b). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard  
25 for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668  
26 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient  
27 factual matter, accepted as true, to state a claim to relief that is plausible on its face." *See Ashcroft*  
28 *v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and may only  
dismiss them "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his

1 claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014)  
2 (quoting *Iqbal*, 556 U.S. at 678).

3 In considering whether the complaint is sufficient to state a claim, all allegations of material  
4 fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar Summit*  
5 *P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although  
6 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must  
7 provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555  
8 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.* Unless it is  
9 clear the complaint’s deficiencies could not be cured through amendment, a pro se plaintiff should  
10 be given leave to amend the complaint with notice regarding the complaint’s deficiencies. *Cato v.*  
11 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

12 Here, Plaintiff brings a complaint against the Drug Enforcement Agency (“DEA”) under 42  
13 U.S.C. § 1983, as well as 18 U.S.C. §§ 241 and 242, alleging that the DEA violated his rights by  
14 conducting a search and seizure pursuant to a warrant that Plaintiff alleges was not based on  
15 probable cause, and through use of excessive force in conducting the search and seizure.

16 As a preliminary matter, 18 U.S.C. §§ 241 and 242 are criminal statutes, and cannot form  
17 the basis of a civil action. *Peabody v. United States*, 394 F.2d 175, 177 (9th Cir. 1968). As for  
18 Plaintiff’s § 1983 claims, these are characterized as personal injury claims for statute of limitations  
19 purposes. *Wilson v. Garcia*, 471 U.S. 261, 276 (1985). Nevada personal injury claims must be  
20 brought within two years of the alleged conduct. Nev. Rev. Stat. 11.190(4)(c) and (e). The statute  
21 of limitations for § 1983 claims brought in Nevada is therefore two years. *Perez v. Seevers*, 869  
22 F.2d 425, 426 (9th Cir. 1989). An action is deemed to be commenced when the complaint was  
23 filed. *Id.*

24 Here, Plaintiff’s claim arises out of conduct alleged to have occurred in Nevada, and was  
25 brought in the District Court for the District of Nevada. The alleged conduct occurred on February  
26 12, 2013. Plaintiff’s complaint was filed on August 10, 2016, more than two years after the alleged  
27 conduct. The § 1983 claim is therefore time-barred. Plaintiff’s complaint does not state a claim for  
28 which he is entitled to relief, and because it is time-barred, cannot be cured by amendment. The

1 Court will therefore recommend that Plaintiff's complaint be denied with prejudice.

2 **III. Motion for Appointment of Counsel**

3 As for Plaintiff's motion for appointment of counsel, civil litigants do not have a Sixth  
4 Amendment right to appointed counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981).  
5 In very limited circumstances, federal courts are empowered to request an attorney to represent an  
6 indigent civil litigant. For example, courts have discretion, pursuant to 28 U.S.C. § 1915(e)(1), to  
7 "request" that an attorney represent indigent civil litigants upon a showing of "exceptional  
8 circumstances." *Ageyman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).  
9 The circumstances in which a court will make such a request, however, are exceedingly rare and  
10 require a finding of extraordinary circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d  
11 796, 799-800 (9th Cir. 1986). The difficulties inherent in proceeding pro se do not qualify as  
12 exceptional circumstances. *Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

13 To determine whether the "exceptional circumstances" necessary for appointment of  
14 counsel are present, courts evaluate (1) the likelihood of plaintiff's success on the merits and (2) the  
15 plaintiff's ability to articulate his claim *pro se* "in light of the complexity of the legal issues  
16 involved." *Agyeman*, 390 F.3d at 1103 (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th  
17 Cir. 1986)). Neither of these factors is dispositive and both must be viewed together. *Wilborn*, 789  
18 F.2d at 1331.

19 Here, the court does not find any exceptional circumstances. Plaintiff has not stated a claim  
20 for which he is entitled to relief, nor is the claim unusually complex in light of the legal issues  
21 involved. The Court will therefore deny the motion for appointment counsel.

22 The Court previously entered an order (ECF No. 11) on February 28, 2018 addressing the  
23 above issues. That order contained a typographical error and will be vacated.

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1 IT IS THEREFORE ORDERED that the Court's order and report and recommendation  
2 (ECF No. 11) is VACATED.

3 IT IS FURTHER ORDERED that Plaintiff's Application for Leave to Proceed *In Forma*  
4 *Pauperis* (ECF No. 9) is GRANTED. Plaintiff will not be required to pay the filing fee in this  
5 action. Plaintiff is permitted to maintain this action to conclusion without the necessity of  
6 prepayment of any additional fees or costs or the giving of a security for fees or costs.

7 IT IS FURTHER ORDERED that the Clerk of the Court must file Plaintiff's complaint  
8 (ECF No. 1-1).

9 IT IS FURTHER ORDERED that Plaintiff's motion for appointment of counsel (ECF  
10 No. 5) is DENIED.

11 IT IS RECOMMENDED that the complaint be DISMISSED with prejudice for failure to  
12 state a claim upon which relief can be granted.

13 **NOTICE**

14 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be  
15 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has  
16 held that the courts of appeal may determine that an appeal has been waived due to the failure to  
17 file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit  
18 has also held that (1) failure to file objections within the specified time and (2) failure to properly  
19 address and brief the objectionable issues waives the right to appeal the District Court's order  
20 and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153,  
21 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).  
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23 DATED: March 1, 2018

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26 C.W. Hoffman, Jr.  
27 United States Magistrate Judge  
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